(3)

(1)

IN THE HONRABLE HIGH COURT OF JUDICATURE AT BILASPU

CRI. A. No:- 1184 /2002. [D.B.].

Appellant:- :- Lalji aged 33 yrs. S/o. Paddu Yadav
-occupation –Agriculture occupation
R/o.Belsar , P.S. Chalagali.
Distt- Serguja.

(In jail)

Filed on 15/11/2002 by Shri Abhay Kr. Tiwari Advocate

R. to D.R. (J) 15/11

VERSUS

Respondant:- :- State of Chhattisgarh.

APPEAL UNDER SECTION 374 OF THE CRIMINAL PROCEDURE CODE

(56)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.1184 of 2002

Lalji

- Versus -

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
19-9-2006

HON'BLE MR. JUSTICE V.K. SHRIVASTAVA

Agree

Sd/-
V.K. Shrivatava
Judge

POST FOR JUDGMENT ON 21st SEPTEMBER, 2006

Sd/-
L.C. Bhadoo
Judge

(57)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH*: HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI V.K. SHRIVASTAVA, JJ.

Criminal Appeal No.1184 of 2002

Lalji

Versus

State of Chhattisgarh

Present:

Mr. Abhay Tiwari, Advocate — For the appellant.

Mr. Arun Sao, Additional Public Prosecutor
With Mr. U.K.S. Chandel, Panel Lawyer — For the State/respondent.

JUDGMENT

(Delivered on 21st September, 2006)

The following judgment of the Court was delivered by *L.C. Bhadoo, J.*

1. This appeal is directed against the judgment of conviction and order of sentence dated 30th October, 2002 passed by the Special Judge, Ambikapur, in S.T. No.3/2000 whereby learned Special Judge after holding the accused/appellant guilty for commission of offence under Sections 450 and 376 (2)(g) of the I.P.C. read with Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, sentenced him to undergo R.I. for 5 years & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for one month, to undergo imprisonment for life & to pay a fine of Rs.15,000/-, in default of payment of fine to further undergo R.I. for 15 months, respectively.

2. The case of the prosecution, in brief, was that on 3-9-98 at about 6 p.m. in the evening when the prosecutrix was at her residence in village Belsar along with her mother and younger sister namely Sushila, accused/ appellant along with co-accused Lalan Jaiswal entered the house and after threatening the mother of the prosecutrix, her sister and the prosecutrix,

both of them committed rape on the prosecutrix. The matter was reported by the prosecutrix in the Police Station Basantpur on 4-9-98, on which First Information Report (Ex.-P/1) was registered for commission of offence under Sections 450 and 376 read with Section 34 of the I.P.C. and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused/appellant was sent for examination in order to ascertain as to whether he was capable to perform sexual intercourse. The doctor after his examination, gave a report (Ex.-C/1) and opined that the accused was physically fit for performance of sexual intercourse. Undergarment of the accused was also taken into possession and was sent for opinion of the doctor. The doctor opined that there were semen and blood like spots on the undergarments and he gave his report Ex.-C/2. The prosecutrix was also sent for her medical examination to the Primary Health Centre, Wadrafnagar where Dr. Kalpana Singh examined her and found that she was about 14 years of age and hymen was congested, ruptured and partially healed and there was tenderness in vagina. She gave her report Ex.-P/18. Petticoat of the prosecutrix was taken into possession, same was sent for examination to Dr. Kalpana Singh, who after examination gave her report (Ex.-P/19) and found that there were stains on the petticoat. Broken bangles of the prosecutrix were taken into possession from the place of occurrence under Ex.-P/10. One bangle of the prosecutrix was also taken into possession as sample under Ex.-P/11. Undergarments of the accused were taken into possession under Ex.-P/12. The site plan (Ex.-P/4) was prepared by the Investigating Officer. The petticoat of the prosecutrix was taken into possession under Ex.-P/2. Injuries on the body of mother of the prosecutrix namely Smt. Raiman Bai (PW-4) were also examined and it was found that there was abrasion on the right arm, there was abrasion on the right side of the chest, she was complaining of pain in the back and the doctor gave the report Ex.-P/17.

3. After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn, committed the case to the Sessions Judge, Ambikapur, from where learned Special Judge received the case on transfer.

4. The prosecution in order to establish the charge against the accused examined 7 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. He produced one Ramkeshwar as defence witness. Learned Special Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para-1 of this judgment. Co-accused namely Lalan Jaiswal could not be arrested and he is still absconding.

5. We have heard learned counsel for the parties.

6. Learned counsel for the accused/appellant did not argue the matter on the merits. He simply argued the matter on the point of sentence. He submitted that looking to the facts of the present case, if minimum sentence as prescribed under Section 376 (2)(g) of the I.P.C. is imposed upon the accused/appellant, that will meet ends of justice.

7. On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

8. We have perused the record and judgment of the trial Court. The prosecutrix (PW-1) has categorically stated that on the fateful day, in the evening, she was at her residence along with her mother and younger sister. Her younger sister was busy in cleaning the utensils, her mother was tying the goats and she was making preparation for cooking of meal, at that time, accused Lalan and Lalji entered the house and enquired about

her father, when her mother replied that Ranglu is not at the residence, on which Lalan threatened her mother not to raise cries otherwise she would face dire consequences, assaulted her with a club, and said that if she would raise the cries, she would be murdered. Accused Lalan caught hold of her and threatened her not to raise cries, closed the doors from inside, gagged her mouth with handkerchief, after throwing her on the ground Lalan committed rape on her and thereafter accused Lalji committed rape on her. Thereafter they ran away. Her mother went to call her father. When her father came, the doors of her room were opened and she disclosed to her mother. Thereafter next day morning report (Ex.-P/1) was lodged at the Police Station. The evidence of the prosecutrix has been corroborated by the evidence of PW-4 Smt. Raiman Bai, mother of the prosecutrix. She has stated that accused Lalan and Lalji both entered their house in the evening, accused Lalan assaulted her with a Lathi on her hand and threatened not to raise cries, thereafter Lalan and Lalji took her daughter into a room, closed the room from inside and thereafter they ran away. She went to call her husband and on enquiry, her daughter i.e. the prosecutrix disclosed about the rape committed by the accused persons. The bangles of the prosecutrix were broken in the kitchen where rape was committed. The above evidence of the prosecutrix and her mother has also been corroborated by the evidence of younger sister of the prosecutrix namely (PW-5) Ku. Sushila. She has also stated that the accused persons threatened, took the prosecutrix and committed rape on the prosecutrix in the kitchen. The said ocular evidence stands corroborated by the fact that broken bangles of the prosecutrix were taken into possession by the Investigating Officer under Ex.-P/10, the prosecutrix was examined by Dr. Kalpana Singh in which she has stated that hymen was congested, ruptured and partially healed and there was tenderness in vagina which corroborates the fact that rape was committed on the prosecutrix. In the

cross-examination of these witnesses, the defence has not been able to bring on record any circumstance which makes the evidence of these witnesses untrustworthy or unreliable or that the prosecutrix and her mother had a reason to implicate the accused in a false case. Therefore, offence under Sections 450 and 376(2)(g) of the I.P.C. is fully established and to this extent, we do not find any reason to interfere with the finding of the trial Court.

9. As far as offence under Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, Section 3 (2)(v) envisages that 'any person commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.' There is no evidence on record that the accused persons committed gang rape on the prosecutrix on account of the fact that she being a Scheduled Tribe girl. Therefore, offence under Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has not been established and finding of the trial Court to this extent cannot be sustained.

10. The accused/appellant has been sentenced to undergo imprisonment for life and to pay a fine of Rs.15,000/- under Section 376 (2)(g) of the I.P.C. read with Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as has been held that the prosecution has not been to establish the charge of Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the accused/appellant, therefore, charge under section 376(2)(g) of the I.P.C. remains against the accused/appellant and minimum sentence of 10

years has been prescribed under Section 376 (2)(g) of the I.P.C.. Looking to the facts of the present case, we are of the considered opinion that if life imprisonment with fine is reduced to 10 years R.I., that will meet ends of justice.

11. In the result, the appeal of the appellant partly succeeds and he is acquitted of the charge under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His conviction and sentence under Section 450 of the I.P.C. are maintained. However, sentence of life imprisonment with fine of Rs.15,000/- imposed upon the accused/appellant under Section 376(2)(g) of the I.P.C. is reduced to 10 years R.I. Both the sentences shall run concurrently. As per the judgment, the accused is in detention since 7-9-98 and he is still in detention, therefore, the accused/ appellant shall be entitled for set off for the period during which he remained in custody.

Sd/-
V.K. Shrivatava
Judge

21 st -9-2006

Sd/-
L.C. Bhadoo
Judge

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